

R.D. # 0001-04
Bergen County, New Jersey

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

BERGEN COUNTY COMMUNITY ACTION PROGRAM, INC.¹

Employer

and

CASE 22-RC-12431

**SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 617, AFL-CIO, CLC²**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

³ Briefs filed by the parties have been duly considered.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁴
3. The labor organization involved claims to represent certain employees of the Employer.⁵
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act is as described *infra*.

The Petitioner seeks to represent a unit of approximately 68 employees consisting of all full-time and regular part-time professional employees, including all health specialist assistants (RNs), State certified teachers (including special education teachers and head teachers) and all full-time and regular part-time non-certified teachers, assistant teachers, bus aides, bus drivers, family advocates, health aides and teacher aides employed by the Employer at its Bergen County, New Jersey Head Start facilities but excluding all office clerical employees, receptionists, food service employees, guards and supervisors as defined in the Act, and any other employees. The parties have stipulated that there is no history of collective bargaining between the Employer and the Petitioner and that there is no contract bar

⁴ The Employer is a New Jersey non-profit corporation engaged in the provision of early childhood education services at various Head Start facilities in Bergen County, New Jersey, the only facilities involved herein. During the preceding 12 months, the Employer derived gross revenue in excess of \$250,000; and during the same period of time purchased and received at its Bergen County, New Jersey facilities good and supplies valued in excess of \$5,000 from suppliers located within the State of New Jersey, including PSE&G, who received these goods and supplies directly from points outside the State of New Jersey.

or other bar that would preclude the processing of the petition. These stipulations are accepted.

Professional Employees

The Board is prohibited under Section 9(b)(1) of the Act from including professional employees in a unit with employees who are not professionals, unless a majority of the professionals vote for inclusion in such a unit. *Sonotone Corporation*, 90 NLRB 1236 (1950). I shall therefore direct elections in the following voting groups:

Voting Group “A”

All full-time and regular part-time professional employees, including all health specialist assistants (RNs) and State certified teachers including special education teachers and head teachers, employed by the Employer at its Bergen County, New Jersey Head Start facilities, but excluding all non-certified teachers, assistant teachers, bus aides, bus drivers, family advocates, health aides, teacher aides, office clerical employees, receptionists, food service employees, guards and supervisors as defined in the Act, and any other employees.

Voting Group “B”

All full-time and regular part-time non-certified teachers, assistant teachers, bus aides, bus drivers, family advocates, health aides and teacher aides, employed by the Employer at its Bergen County, New Jersey Head Start facilities, but excluding all office clerical employees, receptionists, food service employees, all professional employees, guards and supervisors as defined in the Act, and any other employees.

The employees in voting group B will be polled to determine whether or not they wish to be represented by the Petitioner. The employees in voting group A will be asked two questions on their ballot:

1. Do you desire to be included with the employees in Group B (All full-time and regular part-time non-certified teachers, assistant teachers, bus aides, bus drivers, family advocates, health aides and teacher aides) in a single unit for purposes of collective bargaining?

⁵ The parties stipulated and, I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

2. Do you desire to be represented for purposes of collective bargaining by Service Employees International Union, Local 617, AFL-CIO, CLC?

If a majority of the professionals in voting group A vote “yes” to the first question indicating their wish to be included in a unit with non-professional employees, they will be so included. Their vote on the second question will then be counted together with the votes of the non-professional employees. If the professional employees in voting group A vote against inclusion, they will not be included with the non-professional employees. Their vote on the second question will then be separately counted to determine whether or not they wish to be represented by the Petitioner.

Although the Employer stipulated that voting group A and voting group B are appropriate units for the purpose of collective bargaining, it objects to the order in which the questions will be asked of the professional employees. In this regard, the Employer asserts that the order of the questions should be reversed so that the professional employees will first be asked if they wish to be represented by the Petitioner (Question # 1) and then asked if they wish to be included with a unit of non-professional employees (Question # 2). The Employer contends that the order of questions as directed by this Decision assume that the professional voter favors representation and is therefore prejudicial. I find that this contention is without merit.

As noted in *Pratt & Whitney*, 327 NLRB 1213 (1999), the Board’s *Sonotone* procedures, which have existed for fifty years, clearly conform to the statutory purpose of giving professional employees a separate vote on representation. In rejecting an assertion that the well-established *Sonotone* procedures are flawed, the Board also noted that:

The questions on the ballot clearly delineate the alternatives from which the voting employees may choose. Both the professional and nonprofessional employees know the options available to them as they vote. The only open question is whether the professional employees will choose to be represented with or without, the non-professional employees.

Such a procedure comports with the statute, as described above, and also presents the employees with an informed choice.

Pratt & Whitney, 327 NLRB 1213, 1218 (1999).

Accordingly, I reject the Employer's assertion that the order of questions as listed on the ballot is either prejudicial or confusing. I find that the order that the questions will be listed on the ballot conform to the Board's holding in *Sonotone* and will provide the employees the clear opportunity to either accept or reject representation by the Petitioner.

The unit determination is based, in part then, upon the results of the election among the professional and non-professional employees. However, I now make the following finding in regard to the appropriate unit:

If a majority of the professional employees in voting group A vote for inclusion in a unit of non-professional employees, the following will constitute the unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time professional employees, including all health specialist assistants (RNs), State certified teachers including special education teachers and head teachers; and all full-time and regular part-time non-certified teachers, assistant teachers, bus aides, bus drivers, family advocates, health aides and teacher aides, employed by the Employer at its Bergen County, New Jersey Head Start facilities, but excluding all office clerical employees, receptionists, food service employees, guards and supervisors as defined in the Act, and all other employees.

If a majority of the professionals do not vote for inclusion with the non-professional employees, the following two groups of employees will constitute separate bargaining unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Unit A

All full-time and regular part-time professional employees, including all health specialist assistants (RNs) and State certified teachers

including special education teachers and head teachers employed by the Employer at its Bergen County, New Jersey Head Start facilities, but excluding all non-certified teachers, assistant teachers, bus aides, bus drivers, family advocates, health aides, teacher aides, office clerical employees, receptionists, food service employees, guards and supervisors as defined in the Act and any other employees.

Unit B

All full-time and regular part-time non-certified teachers, assistant teachers, bus aides, bus drivers, family advocates, health aides and teacher aides employed by the Employer at its Bergen County, New Jersey Head Start facilities, but excluding all office clerical employees, receptionists, food service employees, all professional employees, guards and supervisors as defined in the Act, and any other employees.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Service Employees International Union, Local 617, AFL-CIO, CLC** and also to

determine whether or not the professional employees in voting group A desire to be included with the non-professional employees.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the voting groups found appropriate above shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the NLRB Region 22, 20 Washington Place, Fifth Floor, Newark, New Jersey 07102, on or before February 11, 2004. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by February 18, 2004.

Signed at Newark, New Jersey this 4th day of February 2004.

Gary T. Kendellen, Regional Director
NLRB, Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102

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